



IN THE
Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-289

PRUNEYARD SHOPPING CENTER AND FRED SAHADI,
Appellants,

v.

MICHAEL ROBINS, ET AL., *Appellees.*

On Appeal From the Supreme Court
of the State of California

**APPELLANTS' RESPONSE TO APPELLEES'
MOTION TO DISMISS**

LATHAM & WATKINS
MAX L. GILLAM
ROBERT E. CURRIE
JAMES W. DANIELS
WILLIAM C. KELLY, JR.
555 South Flower Street
Los Angeles, California 90071
(213) 485-1234
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 828-4400

RUFFO, FERRARI & McNEIL
THOMAS P. O'DONNELL
101 Park Center Plaza
Suite 1300
San Jose, California 95113
(408) 287-2233

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Appellees' motion to dismiss attempts to relitigate facts found against them by the trial court. In particular, appellees recite as part of their statement of the case that publicly owned areas are "inadequate for a petition project by reason of the scarcity of people to be found therein" and that appellees' "activity could not be effectively carried out on the public sidewalks of the center or elsewhere." Motion to Dismiss at 5. The trial court found to the contrary:

The county . . . has many shopping centers, public shopping and business areas, public buildings,

parks, stadia, universities, colleges, schools, post offices and similar public areas where large numbers of people congregate and where people can freely exercise First Amendment rights, including without limitation . . . seeking signatures on petitions.

* * *

Plaintiffs only attempted to obtain signatures to their petition on private property, rather than in public areas whether nearby or otherwise.

* * *

There are adequate, effective channels of communication for plaintiffs other than soliciting on the private property of the CENTER.

Appendix to Jurisdictional Statement at A-2, A-3.

Nor, as appellees assert, did the California Supreme Court "modify" the trial court's findings. Motion to Dismiss at 7. Rather, it simply ignored those findings, choosing instead to retreat to generalizations and statistics about shopping centers in San Jose and in our society generally. This Court's decision in *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972), is a complete answer to the contention that such data warrant a restructuring of the respective rights of shopping center owners and would-be petitioners:

The essentially private character of a store and its privately owned abutting property does not change by virtue of being large or clustered with other stores in a modern shopping center.

* * *

There may be situations where accommodations between [the Fifth and Fourteenth Amendment rights of private property owners and the First

Amendment rights of all citizens] and drawing of lines to assure due process protection of both, are not easy. But on the facts presented in this case, the answer is clear.

407 U.S. at 569-70.

The motion to dismiss also dwells upon the argument that an adequate and independent state ground insulates a state court judgment from review in this Court. This self-evident principle has no part to play in the present case. The California Supreme Court premised the right of access on its revised interpretation of the state constitution, but it could not decide this case for appellees without also reaching and rejecting appellants' federal constitutional defenses.

Finally, the motion to dismiss mirrors the opinion of the California Supreme Court in its focus upon yet another irrelevancy—the role of initiative, referendum and recall procedures in California state government. Motion to Dismiss at 19. The petitioning sought to be conducted at Mr. Sahadi's shopping center involved Syrian emigration policy. It did not involve an initiative, referendum or recall; was not addressed to state officials; and did not concern state issues.

This is a case in which the California Supreme Court has created a doctrinal house of cards. Ignoring the facts as found by the trial court and ignoring the law as propounded in this Court's shopping center access cases, the court below has instead treated the case as if it involved some safety standard or zoning restriction.

If federal property rights of California shopping center owners must be balanced anew against a right of access, that balance should be struck by this Court.

Respectfully submitted,

LATHAM & WATKINS

MAX L. GILLAM

ROBERT E. CURRIE

JAMES W. DANIELS

WILLIAM C. KELLY, JR.

555 South Flower Street

Los Angeles, California 90071

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